

Message Text

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ORIGIN PM-03

INFO OCT-01 EA-06 ISO-00 ACDA-05 CIAE-00 INR-07 IO-10 L-02

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EA/ANP - MR. MICHAUD

OPNAV (OP 616) - CAPT HURT

OSD(ISA) - MR. FRENCH

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FM SECSTATE WASHDC

TO AMEMBASSY CANBERRA PRIORITY

INFO AMEMBASSY WELLINGTON

SECDEF

CNO

CINCPAC HONOLULU HI

CINCPACFLT MAKALAPA

USDAO CANBERRA

C O N F I D E N T I A L STATE 041397

E.O. 11652:GDS

TAGS: MARR, US, AS

SUBJECT: NPW VISITS TO AUSTRALIA

REFERENCES: (A) STATE 041205 NOTAL

(B) STATE A-292, JAN 16, 1975

(C) NAVY REPORT NT-74-1 OF APRIL 1974

(D) CNO (OP616) LETTER TO US ALUSNA CANBERRA DATED 26 JUNE
1974

CINCPAC ALSO FOR POLAD

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1. ON OCTOBER 9, 1974 AUSTRALIAN EMBASSY COUNSELOR
MCKEOWN CALLED AT DEPARTMENT TO DISCUSS THE QUESTION OF US
POLICY ON NUCLEAR WARSHIP LIABILITY AND INDEMNITY. HE
LEFT A PAPER SETTING FORTH DETAILED LEGAL QUESTIONS TO

WHICH THE GOA REQUESTED A REPLY. WE HAVE RESPONDED TO MCKEOWN'S QUESTIONS (REFTEL A). HE ALSO CONFIRMED WHAT WE HAD BEEN TOLD BY FIRST ASD FOR PLANS PRITCHETT, IN SEPTEMBER -- THAT RESUMPTION OF NPW VISITS TO AUSTRALIA WAS SUBJECT TO:

A. RESOLUTION OF THE THEN-PENDING AUSTRALIAN LITIGATION WITH FRANCE OVER NUCLEAR WEAPON ATMOSPHERIC TESTING, IN THE INTERNATIONAL COURT OF JUSTICE (ICJ).

B. COMPLETION OF ENVIRONMENTAL IMPACT STATEMENT ON NPW VISITS BY THE GOA.

C. REACHING A SATISFACTORY UNDERSTANDING WITH THE US ON THE QUESTION OF LIABILITY AND INDEMNITY.(MINISTER OF DEFENSE BARNARD ALSO CONFIRMED ABOVE IN SEPTEMBER MEETING WITH SECDEF, BUT WENT FURTHER TO STATE THAT HE RECOGNIZED NEED FOR AUSTRALIA TO GET THIS ISSUE FAVORABLY RESOLVED.)

2. AS EMBASSY IS AWARE, THE ICJ HAS DISMISSED THE AUSTRALIAN CASE DUE TO FRENCH STATEMENTS THAT THEY HAVE TERMINATED ATMOSPHERIC TESTING OF NUCLEAR WEAPONS IN THE SOUTH PACIFIC.

3. BY REF B WE ADVISED EMBASSY THAT PRESIDENT FORD SIGNED INTO LAW PL 93-513, A JOINT CONGRESSIONAL RESOLUTION ASSURING COMPENSATION FOR DAMAGES CAUSED BY NUCLEAR INCIDENTS INVOLVING THE NUCLEAR REACTOR OF A UNITED STATES WARSHIP, AND PROVIDED COPIES OF THE LAW AND THE ASSOCIATED JCAE REPORT. WITH PASSAGE OF PL 93-513 AND RESOLUTION OF THE ICJ ISSUE, WE WOULD LIKE TO RENEW OUR EFFORTS AT SENIOR LEVEL TO RESOLVE THE NPW VISIT IMPASSE WITH AUSTRALIA. CONCERNING THE ENVIRONMENTAL IMPACT REPORT, PRITCHETT INDICATED IN SEPTEMBER THAT THE STUDY HAD BEEN COMPLETED AND THAT IT WAS BEING GIVEN TO THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION FOR CONSIDERATION. IT MIGHT CONFIDENTIAL

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THEREFORE HELP TO GIVE GOA A COPY OF REF C, THE LATEST ANNUAL NAVY REPORT ON ENVIRONMENTAL MONITORING AND RADIOACTIVE WASTE DISPOSAL FROM US NUCLEAR POWERED SHIPS AND SUPPORT ACTIVITIES, A COPY OF WHICH WAS SENT BY CNO TO ALUSNA CANBERRA (REF D). COPIES OF EARLIER VERSIONS OF THIS REPORT PREVIOUSLY HAVE BEEN GIVEN TO GOA AUTHORITIES, AND THE LATEST ONE CONTINUES TO SHOW THAT THE OPERATION OF THESE SHIPS IS HAVING NO EFFECT ON THE ENVIRONMENT OR THE HEALTH AND SAFETY OF THE PUBLIC. WE THEREFORE ENVISION EMBASSY MAKING AN APPROACH TO GOA AT A SENIOR LEVEL AND TRANSMITTING COPIES OF THE NEW LAW, NAVY REPORT, AND JCAE REPORT UNDER AIDE MEMOIRE. WE DEFER TO EMBASSY ON PRECISE TIMING AND TACTICS, BUT CON-

SIDER IT DESIRABLE FOR APPROACH TO INCLUDE DISCUSSIONS
BETWEEN CHARGE AND MINDEF/DFA.

4. AIDE MEMOIRE SHOULD MAKE FOLLOWING POINTS:

A. THE UNITED STATES UNDERSTANDS THAT THE CASE OVER
NUCLEAR WEAPONS TESTING IN THE ATMOSPHERE IN THE ICJ HAS
BEEN DROPPED. FROM PAST DISCUSSION, WE UNDERSTAND THAT
THIS ISSUE NEED NO LONGER STAND IN THE WAY OF RESOLVING
THE IMPASSE OVER US NPW VISITS TO AUSTRALIA.

B. WE NOW ARE IN A POSITION TO PROVIDE NEW ASSURANCES
CONCERNING NPW REACTOR ACCIDENT LIABILITY OWING TO
LEGISLATIVE AUTHORITY WHICH HAS RECENTLY BEEN ENACTED.

C. ATTACHED IS A COPY OF RECENTLY ENACTED US LEGISLATION
PERTAINING TO THE SETTLEMENT OF CLAIMS WHICH MIGHT ARISE
IN THE UNLIKELY EVENT OF A NUCLEAR INCIDENT INVOLVING
THE NUCLEAR REACTOR OF A UNITED STATES WARSHIP. A DIS-
CUSSION OF THE PURPOSE OF THIS LEGISLATION IS CONTAINED
IN THE OCTOBER 16, 1974, REPORT BY THE JOINT CONGRESSIONAL
COMMITTEE ON ATOMIC ENERGY, A COPY OF WHICH IS ALSO
ATTACHED. AS OF DECEMBER 6, 1974, THE PROVISIONS OF THIS
LEGISLATION ARE IN EFFECT FOR ALL UNITED STATES NUCLEAR
POWERED WARSHIPS ENTERING AUSTRALIAN AND OTHER FOREIGN
PORTS.

D. THE NEW LAW, PL 93-513, PROVIDES THAT THE VALIDITY
(OR MERIT) OF ANY CLAIM ARISING OUT OF A NUCLEAR POWERED
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WARSHIP REACTOR INCIDENT WILL BE DECIDED BY THE UNITED
STATES ON THE BASIS OF ABSOLUTE (NO FAULT) LIABILITY.
THIS PRINCIPLE WILL BE APPLIED EVEN THOUGH AUSTRALIA
MAY NOT HAVE IN EXISTENCE ANY RELEVANT LEGISLATION ON THE
SUBJECT.

E. AS A BILL WHICH WAS ORIGINATED IN AND PASSED BY THE
CONGRESS AND SIGNED BY THE PRESIDENT, THIS LEGISLATION
IS TANGIBLE EVIDENCE THAT THE UNITED STATES IS PREPARED
TO SETTLE MERITORIOUS CLAIMS FOR NUCLEAR REACTOR RELATED
DAMAGE INVOLVING ITS NUCLEAR POWERED WARSHIPS PROMPTLY
AND ON A FAIR AND EQUITABLE BASIS.

F. THIS LEGISLATION IS DESIGNED TO CLARIFY APPLICATION
OF A LEGAL PRINCIPLE AND NOT BECAUSE THE UNITED STATES
CONSIDERS A NUCLEAR POWERED WARSHIP REACTOR ACCIDENT
EVEN REMOTELY POSSIBLE. THESE SHIPS HAVE A REMARKABLE
RECORD, ACCUMULATING TO DATE OVER 1250 YEARS OF REACTOR
OPERATION WITHOUT AN ACCIDENT. WITH 127 NAVAL REACTORS
IN OPERATION, US NUCLEAR POWERED SHIPS HAVE VISITED OVER
30 COUNTRIES AND 85 FOREIGN PORTS IN COMPLETE SAFETY.

G. WITH ENACTMENT OF PL 93-513, COUNTRIES WHO GRANT PORT ENTRY TO US NPW NOW HAVE BOTH A POLITICAL AND A STATUTORY ASSURANCE REGARDING HOW THE US WILL DEAL WITH NPW REACTOR ACCIDENT CLAIMS. IT SHOULD BE RECOGNIZED THAT, SINCE THERE HAS NEVER BEEN AN NPWREACTOR INCIDENT, THERE ARE NO LEGAL PRECEDENTS AS TO PRECISELY WHAT PROCEDURES WILL BE FOLLOWED IN SETTTLING SUCH CLAIMS. UNDER THESE CIRCUMSTANCES, ALTHOUGH THERE WELL MAY EXIST ADDITIONAL PROCEDURAL QUESTIONS NOW UNANSWERABLE, WE BELIEVE THE

POLITICAL AND STATUTORY ASSURANCES THE US HAS GIVEN AUSTRALIA SHOULD BE SUFFICIENT TO ALLAY AUSTRALIAN CONCERNS.

H. WHEN RESUMED, VISITS BY US NUCLEAR POWERED WARSHIPS TO AUSTRALIA WILL CONTINUE TO BE CONDUCTED IN ACCORDANCE WITH THE ASSURANCES CONTAINED IN THE "STATEMENT BY THE UNITED STATES GOVERNMENT ON THE OPERATION OF US NUCLEAR POWERED WARSHIPS IN FOREIGN PORTS." THIS IS THE STATE-CONFIDENTIAL

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MENT ACCEPTED BY THE GOA FOR PREVIOUS VISITS BY US NPW. THE NEW LEGISLATION IS AN ELABORATION OF THE CLAIMS PROVISION CONTAINED IN PARAGRAPH 3 OF THE STATEMENT AND IS NOW IN EFFECT.

I. TO ASSIST IN REMOVING ANY CONCERNS OVER THE ENVIRONMENTAL ASPECTS OF NPW VISITS, AUSTRALIAN AUTHORITIES WILL FIND THE LATEST US NAVY REPORT ON ENVIRONMENTAL MONITORING AND RADIOACTIVE WASTE DISPOSAL, ALSO ATTACHED, OF VALUE. THIS REPORT SHOWS THAT DURING EVERY YEAR SINCE 1971 THE TOTAL RADIOACTIVITY, LESS TRITIUM, DISCHARGED ANNUALLY TO ALL PORTS AND HARBORS FROM THE MORE THAN ONE HUNDRED US NPW, SUPPORTING TENDERS, NAVAL BASES AND SHIPYARDS WAS LESS THAN 0.002 CURIE. TO PUT THIS VERY SMALL QUANTITY OF RADIOACTIVITY INTO PERSPECTIVE, IT IS LESS THAN THE QUANTITY OF NATURALLY OCCURRING RADIOACTIVITY IN THE VOLUME OF SALT WATER DISPLACED BY A SINGLE NUCLEAR POWERED SUBMARINE. IF ONE PERSON WERE ABLE TO DRINK THE ENTIRE AMOUNT OF RADIOACTIVITY DISCHARGED INTO ANY HARBOR IN 1973, HE WOULD NOT EXCEED THE ANNUAL RADIATION EXPOSURE PERMITTED BY THE INTERNATIONAL COMMISSION ON RADIOLOGICAL PROTECTION. THIS REPORT CONFIRMS THAT THE PROCEDURES USED BY THE US NAVY TO CONTROL RELEASES OF RADIOACTIVITY FROM US NPW AND THEIR SUPPORT FACILITIES ARE EFFECTIVE IN PROTECTING THE ENVIRONMENT AND THE HEALTH AND SAFETY OF THE GENERAL PUBLIC.

J. THE US NAVY IS INCREASINGLY CONVERTING TO NUCLEAR POWER. NEARLY A THIRD OF OUR COMBATANT FLEET, INCLUDING OUR MOST MODERN SHIPS, IS NOW NUCLEAR POWERED. IN ADDITION, CONGRESS HAS RECENTLY PASSED AND THE PRESIDENT

HAS SIGNED A LAW WHICH EFFECTIVELY REQUIRES THAT ALL FUTURE MAJOR COMBATANTS BE NUCLEAR POWERED- NPW'S ARE IDEALLY SUITED TO OPERATIONS IN THE SOUTH PACIFIC AND INDIAN OCEANS, WHERE DISTANCES ARE VAST AND OUR LOGISTIC LINES EXTREMELY LONG. ROUTINE OPERATIONS OF NPW IN THESE AREAS CAN BEST BE CONDUCTED IF WE CAN DEPEND ON ACCESS TO PORTS, PARTICULARLY THOSE IN ALLIED COUNTRIES WHERE DEFENSE RELATIONSHIPS ARE CLOSE (SUCH AS IN ANZUS).

K. THE USG HAS, AFTER CONSIDERABLE EFFORT, OBTAINED
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LEGISLATION WHICH RESOLVES THE PRINCIPAL LEGAL QUESTION WHICH HAS CONCERNED THE GOA. WE HOPE THAT THE GOA NOW WILL ALLOW THE RESUMPTION OF VISITS BY US NPW TO AUSTRALIAN PORTS.

5. EMBASSY SHOULD POINT OUT THAT, AS OF JULY 1975 IT WILL BE FOUR YEARS SINCE THE GOA SUSPENDED U.S. NPW VISITS SO THEY COULD STUDY THE MATTER OF NPW PORT ENTRY. IN VIEW OF OUR NEW LIABILITY ASSURANCES, PERFECT NPW SAFETY RECORD, AND ANZUS DEFENSE RELATIONSHIP, WE BELIEVE THAT THE TIME HAS COME FOR AUSTRALIA TO RESOLVE THIS ISSUE.

6. PLEASE POUCH DEPARTMENT COPY OF AIDE MEMOIRE AFTER DELIVERY AND CABLE GOA RESPONSE. KISSINGER

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